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Paper No. *221*

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JUL 14 2003

In re Application of
Sakowicz, et al.
Application No. 09/235,416
Filed: January 22, 1999
Attorney Docket No.: UCSD-04742

: **OFFICE OF PETITIONS**

:
: **ON PETITION**
:

This is a decision on the petition under 37 CFR 1.182, filed February 21, 2003, to revive the above-identified application. Revival of applications for patents is governed by the provisions of 37 CFR 1.137. Accordingly, this petition is being treated under 37 CFR 1.137(a) for revival of an unavoidably abandoned application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)." This is not a final agency decision.

This application became abandoned May 24, 2001 for failure to timely reply to the Office communication mailed April 23, 2001. The Office communication set a one month shortened statutory period of time for reply. No extensions of time in accordance with 37 CFR 1.136(a) were timely procured. Notice of Abandonment was mailed November 2, 2001.

A grantable petition under 37 C.F.R. § 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 C.F.R. § 1.17(1); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 C.F.R. § 1.20(d)) required pursuant to 37 C.F.R. § 1.137(c).

As to item (1), the instant petition lacks the required reply to the outstanding Office communication. Enclosed please a copy of the Office communication for petitioner's review. Any renewed petition must be accompanied by a proper reply.

As to item (2), it is noted that \$55.00, the small entity fee for a petition under 37 CFR 1.137(a) was previously charged to petitioner's credit card. As a loss of entitlement to small entity statement was filed February 28, 2002, the remaining fee of \$55.00 has been charged to Deposit Account No. 08-1290 as authorized in the instant petition. It is further noted that it would appear that the fee for a Request for Continued Examination

(RCE) was also charged to petitioner's credit card. As the instant application is not currently eligible for RCE practice, petitioner may wish to request a refund of this \$375.00 if appropriate. As to petitioner's contention that a fee should not be assessed in this matter, petitioner is advised that the Office is not at liberty to waive or refund the petition fee as submission of the petition fee is a prerequisite for treatment on the merits of the instant petition under 37 CFR 1.137(a)(2).

As to item (3), where an application becomes abandoned as a consequence of a change of correspondence address (the Office action being mailed to the old, uncorrected address and failing to reach the applicant in sufficient time to permit a timely reply) an adequate showing of "unavoidable" delay will require a showing that due care was taken to adhere to the requirement for prompt notification in each concerned application of the change of address (see MPEP § 601.03), and must include an adequate showing that a timely notification of the change of address was filed in the application concerned, and in a manner reasonably calculated to call attention to the fact that it was a notification of a change of address. See, MPEP 711.03(c). Petitioner has sufficiently established that a change of correspondence address was timely submitted.

Item (4) is inapplicable to the instant application.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition

Commissioner for Patents
P.O. Box 1450
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By facsimile:

(703) 308-6916

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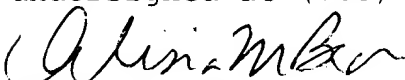
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Telephone inquiries concerning this matter may be directed to the undersigned at (703) 305-0310.



Alesia M. Brown
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of Office Communication